

Before the
UNITED STATES COPYRIGHT ROYALTY BOARD
Library of Congress
Washington, D.C.

-----:
In Re: : Docket No.
: 15-CRB-0001-WR
Determination of Royalty : (2016-2020)
Rates and Terms for : Volume 4-PUBLIC
Ephemeral Recording and : Pages 946-979
Digital Performance of : Pages 1092-1118
Sound Recordings (Web IV) : Pages 1155-1159
-----: Pages 1193-1204

PUBLIC SESSION

Washington, D.C.

Thursday, April 30, 2015

The hearing in the above-entitled matter
was convened at 9:00 a.m.

BEFORE COPYRIGHT ROYALTY JUDGES:

SUZANNE M. BARNETT, CHIEF JUDGE

DAVID R. STRICKLER, JUDGE

JESSE FEDER, JUDGE

Capital Reporting Company
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<p>1 PROCEEDINGS</p> <p>2</p> <p>3 (PUBLIC SESSION)</p> <p>4</p> <p>5 CHIEF JUDGE BARNETT: Good morning.</p> <p>6 Please be seated.</p> <p>7 I'm sorry for the delay. We were</p> <p>8 waiting for Judge Strickler to finish his</p> <p>9 monologue. His morning monologue.</p> <p>10 JUDGE STRICKLER: But serious.</p> <p>11 CHIEF JUDGE BARNETT: Mr. Pomerantz, I</p> <p>12 think the ball is still in your court.</p> <p>13 MR. POMERANTZ: It is in Ms. Ehler's</p> <p>14 court.</p> <p>15 MS. EHLEER: Good morning. Your Honor.</p> <p>16 Rose Ehler representing SoundExchange.</p> <p>17 I would like to call our first witness, Aaron</p> <p>18 Harrison, from Universal Music Group.</p> <p>19 MR. RICH: Your Honor, while I witness</p> <p>20 is coming I want to introduce a new face at our</p> <p>21 table. Steve Benet is the general counsel of</p> <p>22 Pandora Media.</p> <p>23 CHIEF JUDGE BARNETT: Good morning.</p> <p>24 AARON HARRISON,</p> <p>25 being first duly sworn, to tell the truth, the</p>	<p>1 CHIEF JUDGE BARNETT: I'm sorry, Ms.</p> <p>2 Ehler.</p> <p>3 Mr. Harrison, your -- the spelling of</p> <p>4 your name is traditional, two As?</p> <p>5 THE WITNESS: Yes.</p> <p>6 CHIEF JUDGE BARNETT: And S-O-N?</p> <p>7 THE WITNESS: Yes.</p> <p>8 CHIEF JUDGE BARNETT: Thank you.</p> <p>9 MS. EHLEER: Two Rs.</p> <p>10 CHIEF JUDGE BARNETT: Two Rs. Okay.</p> <p>11 In which one?</p> <p>12 THE WITNESS: In Harrison.</p> <p>13 MS. EHLEER: In Harrison. Two Rs in</p> <p>14 Harrison.</p> <p>15 CHIEF JUDGE BARNETT: Thank you.</p> <p>16 THE WITNESS: I have seen it all ways.</p> <p>17 BY MS. EHLEER:</p> <p>18 Q. How many deals have you negotiated, Mr.</p> <p>19 Harrison?</p> <p>20 A. Over a hundred during the course of my</p> <p>21 time at Universal.</p> <p>22 Q. If you open your binder to the first</p> <p>23 tab, which is marked SoundExchange Exhibit 10, can</p> <p>24 you tell me what that is?</p> <p>25 A. Yes.</p>
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<p>1 whole truth and nothing but the truth, testified as</p> <p>2 follows:</p> <p>3 DIRECT EXAMINATION BY COUNSEL FOR</p> <p>4 SOUNDEXCHANGE</p> <p>5 BY MS. EHLEER:</p> <p>6 Q. Can you please state your name for the</p> <p>7 record.</p> <p>8 A. Aaron Harrison.</p> <p>9 Q. And where do you work?</p> <p>10 A. Universal Music Group.</p> <p>11 Q. How long have you worked for Universal</p> <p>12 Music Group?</p> <p>13 A. Close to ten years.</p> <p>14 Q. What's your position there?</p> <p>15 A. Senior vice president of business and</p> <p>16 legal affairs.</p> <p>17 Q. What group are you in?</p> <p>18 A. Logo digital business.</p> <p>19 Q. What are your responsibilities as</p> <p>20 senior vice president?</p> <p>21 A. As senior vice president, I structure,</p> <p>22 negotiate and draft agreements with various digital</p> <p>23 music services that use the entire repertoire of</p> <p>24 Universal Music Group, and we also advise the</p> <p>25 various labels within the Universal Music Group on</p> <p>digital issues.</p>	<p>1 This is my direct testimony in this</p> <p>2 case.</p> <p>3 Q. Did you author that testimony?</p> <p>4 A. Yes.</p> <p>5 Q. Have you had a chance to review it for</p> <p>6 any inaccuracies or confirm it's true?</p> <p>7 A. Yes. I did find one error.</p> <p>8 Q. Without revealing any restricted</p> <p>9 information, can you generally describe what that</p> <p>10 error is?</p> <p>11 And I believe for everybody's benefit,</p> <p>12 it's on Paragraph 39.</p> <p>13 A. Yes.</p> <p>14 So I accidentally mistranscribed a</p> <p>15 couple of the numbers from a chart that I was using</p> <p>16 as the basis for those numbers. One of the numbers</p> <p>17 is correct, but the other two were from, actually,</p> <p>18 a different line in the chart.</p> <p>19 Q. And what was the switch?</p> <p>20 A. So I accidentally switched the numbers</p> <p>21 for Uruguay in place of the numbers for the United</p> <p>22 States.</p> <p>23 Q. So if everybody wants to know the</p> <p>24 particular numbers for Uruguay, those are those</p> <p>25 numbers?</p>

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955	<p>1 A. That's what they are.</p> <p>2 Q. But for the United States, we'll cover</p> <p>3 them again later?</p> <p>4 A. Right.</p> <p>5 CHIEF JUDGE BARNETT: Which table is</p> <p>6 that?</p> <p>7 MS. EHLEER: It's actually in Paragraph</p> <p>8 39, they're the last two numbers in that paragraph.</p> <p>9 CHIEF JUDGE BARNETT: Thank you.</p> <p>10 MS. EHLEER: They're restricted.</p> <p>11 BY MS. EHLEER:</p> <p>12 Q. Aside from those two numbers, is</p> <p>13 everything else true and correct in your testimony?</p> <p>14 A. Yes.</p> <p>15 JUDGE STRICKLER: Excuse me, Counsel,</p> <p>16 did you say Uruguay?</p> <p>17 MS. EHLEER: The two numbers are from a</p> <p>18 rate card, and it's a line for Uruguay was right</p> <p>19 below the line for the United States. So even</p> <p>20 though they're --</p> <p>21 JUDGE STRICKLER: Oh.</p> <p>22 MS. EHLEER: -- they're quoted as the</p> <p>23 United States numbers, they're actually the Uruguay</p> <p>24 numbers.</p> <p>25 THE WITNESS: It was an alphabetical</p>
956	<p>1 chart, so I just went one line below it.</p> <p>2 BY MS. EHLEER:</p> <p>3 Q. So with that correction, is your</p> <p>4 testimony true and correct?</p> <p>5 A. Yes.</p> <p>6 MS. EHLEER: I would like to offer into</p> <p>7 evidence Exhibit 10, which is Mr. Harrison's</p> <p>8 testimony with that correction.</p> <p>9 MR. LARSON: No objection.</p> <p>10 MR. FAKLER: No objection.</p> <p>11 CHIEF JUDGE BARNETT: Exhibit 10 is</p> <p>12 admitted. It is a restricted document.</p> <p>13 (SoundExchange Exhibit No. 10 was</p> <p>14 admitted into evidence.)</p> <p>15 JUDGE STRICKLER: The one that you</p> <p>16 submitted is the change from the one that you</p> <p>17 originally received and it corrects that Uruguay</p> <p>18 mistake?</p> <p>19 MS. EHLEER: No. The one you have still</p> <p>20 has Uruguay mistakes.</p> <p>21 JUDGE STRICKLER: He's going to fix it</p> <p>22 in his restricted testimony?</p> <p>23 MS. EHLEER: He's going to fix it in his</p> <p>24 restricted testimony.</p> <p>25 BY MS. EHLEER:</p>
957	<p>1 Q. Mr. Harrison, in your written</p> <p>2 testimony, you describe a change from an ownership</p> <p>3 model to an access model.</p> <p>4 What do you mean by that?</p> <p>5 A. So, historically, the way consumers</p> <p>6 have acquired music has been through purchase on an</p> <p>7 a la carte basis, first through vinyl records,</p> <p>8 through cassettes and CDs, and then most recently</p> <p>9 permanent downloads. But we have seen a shift over</p> <p>10 the last few years from that one-by-one a la carte</p> <p>11 purchase model where you're listening from a copy</p> <p>12 that's directly on your device, whether that's a</p> <p>13 stereo, or a phone or a computer to an access model</p> <p>14 where listeners are consuming music, accessing it</p> <p>15 from the cloud; meaning from remote servers</p> <p>16 provided by the digital service as opposed to local</p> <p>17 storage on the user's device.</p> <p>18 Q. And --</p> <p>19 JUDGE STRICKLER: Quick question for</p> <p>20 you. The CDs were -- before we moved into the</p> <p>21 digital era, were CDs predominantly only available</p> <p>22 in album form as opposed to singles form?</p> <p>23 THE WITNESS: Well, there were CD</p> <p>24 singles, but CD singles fell dramatically over the</p> <p>25 life of the CD format. And by the, you know, the</p>
958	<p>1 mid to late '90s, they weren't really sold very</p> <p>2 much. Actually, I think the -- I remember physical</p> <p>3 retailers complaining that there weren't enough</p> <p>4 physical -- sorry -- CD singles to sell because</p> <p>5 most of them were just available -- the song was</p> <p>6 only available in album form.</p> <p>7 JUDGE STRICKLER: Was that a record</p> <p>8 industry determination, or your company's</p> <p>9 determination to sell out CD albums, rather than CD</p> <p>10 singles?</p> <p>11 THE WITNESS: I wasn't at Universal</p> <p>12 during that time, so I can't speak to the intent or</p> <p>13 what was going on at that time in the industry.</p> <p>14 JUDGE STRICKLER: But to the extent</p> <p>15 that CDs were sold in album form as opposed to</p> <p>16 single form, that wasn't quite the same as an --</p> <p>17 pure a la carte because it was a bundling. You had</p> <p>18 to buy the songs from one artist, all of the songs</p> <p>19 on the album, rather than an a la carte purchase of</p> <p>20 an individual recording by an individual artist,</p> <p>21 correct?</p> <p>22 THE WITNESS: Right.</p> <p>23 What I mean by a la carte is just a</p> <p>24 purchase of an individual product on a one-by-one</p> <p>25 basis, whether that product is an album or a track</p>

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959	<p>1 that even in a -- in a download store now, you can 2 purchase a track or you can purchase an album, but 3 we consider that entire download store to be an a 4 la carte download store because you're buying an 5 item one or one-by-one basis; whereas, in a cloud 6 service or a streaming service, generally the whole 7 catalog of music is available to you, with some 8 exceptions, and you can just decide what you want 9 to play at any particular time. 10 JUDGE STRICKLER: So when the sale of 11 CD albums, you had a la carte bundles, so-to-speak, 12 bundles from an artist? 13 THE WITNESS: Correct. That's correct. 14 JUDGE STRICKLER: Thank you. 15 BY MS. EHLER: 16 Q. How has that shift from ownership or 17 the a la carte model to these access services 18 changed your approach to digital licensing? 19 A. Well, it's changed it quite a bit. So 20 the record industry in the past was primarily 21 focused on units and a charge for it can be an end 22 all be all to the labels. They would charge for -- 23 they would clamor for a chart position. They 24 wanted to make sure they were number one in the 25 charts, and units were really the focus of the</p>	961	<p>1 and physical sales as the second most important 2 revenue channel right after download sales. 3 JUDGE STRICKLER: Counsel, when you 4 refer to streaming being that important, are you 5 distinguishing in your answer between interactive 6 and noninteractive? 7 THE WITNESS: No. Streaming as a 8 whole. 9 JUDGE STRICKLER: Thank you. 10 BY MS. EHLER: 11 Q. And how does that change in the 12 importance of streaming as a source of revenue 13 impact Universal's ability to achieve a return on 14 its investment in sound recordings? 15 A. Well, it means that streaming is a much 16 bigger factor in how we analyze our return on 17 investment and also the profits that we're able to 18 make in music and in media music sales and music 19 exploitation that we can then reinvest back into 20 new music creation, whether that's in signing 21 artists, spending the time to develop them to get 22 them ready to release music and then recording that 23 music and marketing and distributing it. 24 Q. Has there been as much revenue to do 25 that since this transition?</p>
960	<p>1 labels and the marketing folks. 2 Now in a digital world, and as we're 3 moving away from -- the consumers are moving away 4 from download sales and more towards an access 5 model, we have to focus more on revenue. And so 6 the two things that we're most concerned about are 7 growing the number of users that are consuming 8 music, and that actually has been fairly 9 successful. I think consumption is up, generally, 10 in the music industry. 11 But the second prong is the more 12 challenging one, and that's generating more revenue 13 per each user. So we've changed our -- our metric 14 that we're most concerned about from units to ARPU 15 or average revenue per user. 16 Q. And has the importance of revenue from 17 streaming services changed over that period of 18 time? 19 A. It's changed greatly. When I started 20 at Universal in 2005, streaming was considered a 21 niche product and the ancillary revenue stream that 22 wasn't considered much by the labels. I think it 23 was only about 3 percent of the -- of Universal's 24 revenue. But now it's very significant revenue 25 stream. It's actually recently surpassed CD sales</p>	962	<p>1 A. No. I mean, revenues have fallen, you 2 know, ever since I have been at the company. 3 They've somewhat stabilized over the last three or 4 four years, but at a much lower level, and I think 5 the last I saw the -- the industry as a whole was, 6 you know flat to down maybe a half a percent in 7 2014. 8 JUDGE STRICKLER: How do you think it 9 has stabilized after falling for the revenue so to 10 speak? 11 THE WITNESS: Well, I think part of it 12 is that we are more aggressively moving towards 13 that, that shift into the access model and trying 14 to, you know, support as many subscription services 15 as possible to help grow those services. So, you 16 know, Spotify has, in particular, really -- 17 BY MS. EHLER: 18 Q. I don't want you to get into restricted 19 information. If you -- if your answer wasn't going 20 to, please go ahead. I'm sorry. 21 A. Okay. Yeah, I mean -- so I think we 22 have done a good job as an industry adapting to the 23 new ways that consumers are acquiring music and 24 providing them with that music whenever and 25 wherever they want it. So even though certain</p>

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<p style="text-align: right;">963</p> <p>1 sales channels have fallen, we've been able to 2 shift to other sales channels. So while the mix of 3 music consumption, how music is acquired, how it's 4 paid for, and what revenues generate from it, we're 5 able to adapt and kind of adjust to that mix to 6 maximize the revenue that we're bringing from -- 7 from the way that music is made available to 8 consumers. 9 JUDGE STRICKLER: Those shifts, as far 10 as you know, reduce the desire for the consumers to 11 buy pirates as opposed to or access music to 12 pirates as opposed to accessing music from legal 13 services? 14 THE WITNESS: We hope so, and that's 15 definitely the goal. You know, we've spent the 16 last several years on the one hand trying to fight 17 against illegitimate services like Casale, Limewire 18 and Pirate Bay. But, then, on the other hand, 19 trying to legitimize services that have, in the 20 past, used our music in unlicensed ways, like 21 iMesh, for instance. 22 So we've -- I think we've done a good 23 job at reducing the instance of piracy and we have 24 limited it to kind of a hard core pirate user. But 25 we're never really going to change. There's always</p>	<p style="text-align: right;">965</p> <p>1 to provide enough value and at a low enough 2 perceived price that the consumer is willing to 3 migrate from that free use of music to a paid use 4 of music. 5 JUDGE STRICKLER: When you talk about 6 this migration, are you talking about from an 7 ad-supported legal service to a subscription-based 8 legal service? 9 THE WITNESS: That's one of the ways. 10 Or it could be from another service that they're 11 already using that is not -- that has no upsell to 12 pay, but the subscription service could offer a 13 free trial, a 7-day, 15-day, 30-day free trial to 14 be able to try all of the features of the service 15 without any, you know, conditions, and hopefully 16 after they get into the service and they experience 17 it for a while, they will decide to continue to 18 start paying for the subscription once the trial 19 period is over. 20 JUDGE STRICKLER: Is one of the ways 21 you also try to stabilize revenues -- was one of 22 the ways to try to get consumers or listeners, I 23 should say, to migrate from terrestrial radio to 24 some sort of a service that generated royalties? 25 THE WITNESS: No. We haven't focused</p>
<p style="text-align: right;">964</p> <p>1 going to be some segment of the population that is 2 going to pirate music, and we can't do anything to 3 necessarily stop those hard core users, but we're 4 working hard to provide as many legal alternatives 5 as possible so that the users who want to get music 6 in a convenient and easy way, we provided them many 7 options for that. 8 JUDGE STRICKLER: And was one of the 9 goals to reduce the price of the legal services so 10 piracy didn't seem so attractive -- relatively 11 attractive from an economic point of view? 12 THE WITNESS: Yes. I mean, we've -- 13 all of the legitimate services have to compete with 14 free, and that's the primary, I think, control or 15 restrictions that they have to face. They -- each 16 of the subscription services has to realize that, 17 you know, a consumer can go on to the app store and 18 get a multitude of free services instead of getting 19 one of the paid subscription services. So they 20 need to, one, have a lot of ways to get users into 21 the service to try it on a free basis for some 22 period of time, whether that's a trial period or 23 whether that's a free tier with an upsell to 24 subscription, but they have to get those consumers 25 in the door in the first place, and then they have</p>	<p style="text-align: right;">966</p> <p>1 on terrestrial radio at all in terms of migration 2 of possibility. We think -- I mean, looking at the 3 statistics, almost everybody in the U.S. listens to 4 radio. That's just one of the ways that they 5 listen to music. And we don't think of terrestrial 6 as much as an end-product consumption. It 7 certainly is for a certain number of users that 8 just aren't interested in being music buyers at 9 all. They just turn it on in the car and that's 10 it. 11 But for people that we think of as 12 music consumers, who are accessing music outside 13 the car, also, on their phones, at home, and 14 other places for listening entertainment purposes. 15 But we don't really see terrestrial radio as a 16 competitor or some -- something where we need to 17 migrate from terrestrial to subscription. 18 Terrestrial radio, I think, is seen 19 more as a platform where we can break artists and 20 get the DJs to, you know, pump up those artists, do 21 interviews with those artists, and talk about new 22 album release, so hopefully they migrate from 23 terrestrial radio to actually purchasing the album 24 on an a la carte -- based, you know, on individual 25 one-by-one purchase basis.</p>

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967	<p>1 JUDGE STRICKLER: Thank you.</p> <p>2 BY MS. EHLER:</p> <p>3 Q. Just following up on one point you were</p> <p>4 making, how does YouTube fit into the consumer</p> <p>5 landscape?</p> <p>6 A. Well, YouTube is the largest streaming</p> <p>7 service out there. Many people use YouTube as a</p> <p>8 primary consumption method of music, and even</p> <p>9 though it's a video-playing service, a lot of</p> <p>10 people do use it for audio purposes.</p> <p>11 Q. And does that affect the consumer price</p> <p>12 that you were talking about for subscription</p> <p>13 services?</p> <p>14 A. Yes. I mean, it drags the market down,</p> <p>15 for sure.</p> <p>16 Q. And why is that?</p> <p>17 A. Well, because YouTube is able to use</p> <p>18 the DMCA Safe Harbor so that they have a very -- a</p> <p>19 fairly strong argument. You know, they won the</p> <p>20 case against Viacom on user uploading, such that</p> <p>21 they can credibly tell the record labels that we</p> <p>22 don't really need a license from you. We're not --</p> <p>23 we don't have to provide content on our own. We</p> <p>24 can just rely on users to upload the content, and</p> <p>25 because they have a billion users who are</p>	969	<p>1 telecommunications companies look at how much money</p> <p>2 they're making per subscriber, and so we need to</p> <p>3 look at the world in the same way to gauge the</p> <p>4 success of our business.</p> <p>5 JUDGE STRICKLER: Do you have to look</p> <p>6 at ARPU in the same way when you look -- because</p> <p>7 you referred to digital. Let me back up.</p> <p>8 When you refer to digital, were you</p> <p>9 referring to digital downloads as well as</p> <p>10 streaming?</p> <p>11 THE WITNESS: Yes. When I reference</p> <p>12 the 80 percent number?</p> <p>13 JUDGE STRICKLER: Right.</p> <p>14 THE WITNESS: Yes.</p> <p>15 JUDGE STRICKLER: So the emphasis on</p> <p>16 ARPU applies to digital downloads as well as</p> <p>17 streaming?</p> <p>18 THE WITNESS: Yes. Yeah. So we look a</p> <p>19 lot at how much each iTunes user provides on an</p> <p>20 annual basis to Universal.</p> <p>21 BY MS. EHLER:</p> <p>22 Q. Why is a high ARPU streaming service</p> <p>23 important to Universal?</p> <p>24 A. Because they will generate more revenue</p> <p>25 for the company and add more to our bottom line.</p>
968	<p>1 constantly uploading content every minute of every</p> <p>2 day, they will always have all of the content</p> <p>3 available on YouTube, and it's impossible to take</p> <p>4 it all down through DMCA takedown processes.</p> <p>5 So we're, you know, forced into a</p> <p>6 situation where we have to license YouTube in order</p> <p>7 to make some revenue on the platform because the</p> <p>8 music is going to be there whether we like it or</p> <p>9 not. We at least have to try to monetize it as</p> <p>10 much as possible.</p> <p>11 Q. Earlier, you said the word "ARPU."</p> <p>12 What does that mean?</p> <p>13 A. It stands for average revenue per user</p> <p>14 and it's a metric that we use to gauge the success</p> <p>15 of services to determine where we want to position</p> <p>16 our support and our strategy and where we think we</p> <p>17 can see the most growth. I mean, as we move from a</p> <p>18 physical world to a digital world, you know, now in</p> <p>19 the U.S., Universal is 80 percent digital. Our</p> <p>20 music revenue is 80 percent digital, only 20</p> <p>21 percent physical. And so we have to look at the</p> <p>22 world more like other digital and technology</p> <p>23 companies do, and they primarily rely on ARPU</p> <p>24 metrics. So social media companies look at how</p> <p>25 much revenue they're making per user, the</p>	970	<p>1 Q. And is that -- how does that relate</p> <p>2 with the transition to the access models that we</p> <p>3 discussed earlier?</p> <p>4 A. It means that we really need to look</p> <p>5 closely at where -- what services are making the</p> <p>6 most money per user, as well as which services have</p> <p>7 the most users. So we can't just look, as I said</p> <p>8 before, at units. You know, we have lots of</p> <p>9 services that generate a huge volume of units if</p> <p>10 you consider a streaming unit, but they're not</p> <p>11 necessarily generating much revenue per user. So</p> <p>12 that's not necessarily good for us because that</p> <p>13 consumption of units is potentially taking away</p> <p>14 from the consumption of units at higher ARPU</p> <p>15 services, and we want to support those higher ARPU</p> <p>16 services so that we can make more money as a</p> <p>17 company that then gets funneled back to the labels</p> <p>18 to invest in music creation.</p> <p>19 Q. Do you have a sense of whether music</p> <p>20 streaming services -- and I'm speaking very</p> <p>21 generally -- promote UMG's other services of</p> <p>22 revenue?</p> <p>23 A. Sorry. Could you repeat the question?</p> <p>24 Q. Do you have a sense of whether music</p> <p>25 streaming services generally promote Universal's</p>

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971	<p>1 other sources of revenues, so CD downloads?</p> <p>2 A. We haven't found that streaming</p> <p>3 services promote other services because they're a</p> <p>4 consumption model in itself. I mean, they're</p> <p>5 making the end product available. You know, it's</p> <p>6 not a sample or it's not a portion of that end</p> <p>7 product. It's the full end product. So there's</p> <p>8 not as much need to purchase the music when you</p> <p>9 have all the music available at your fingertips.</p> <p>10 Q. And what's your evidence for that</p> <p>11 general sense?</p> <p>12 A. Well, we have seen sales, meaning</p> <p>13 download sales and physical sales, declining</p> <p>14 drastically over the last few years, especially</p> <p>15 since 2013. Even download sales, which had been</p> <p>16 the primary growth driver in the business, started</p> <p>17 falling dramatically and now have recently, in some</p> <p>18 periods, at least, exceeded the decline in CD</p> <p>19 sales. So we really need the streaming services to</p> <p>20 generate more revenue for us in order to maintain</p> <p>21 our level of investment in music and to</p> <p>22 sufficiently pay our artists so that they, you</p> <p>23 know, continue to, you know, want to renew their</p> <p>24 recording agreements with us and to make new music,</p> <p>25 as well.</p>	973	<p>1 music creation has to do with just the statutory</p> <p>2 components that we're talking about in this</p> <p>3 proceeding, you know. contribution of creating new</p> <p>4 music. So that -- we are trying to use that money</p> <p>5 to create new music and to add additional content</p> <p>6 that can be used by the streaming services in the</p> <p>7 future.</p> <p>8 JUDGE STRICKLER: You also need profits</p> <p>9 to have the incentive to go and do that so that you</p> <p>10 can create music.</p> <p>11 THE WITNESS: Yes, of course. So</p> <p>12 the -- if Vivendi, for instance, sees that this is</p> <p>13 not a profit-making business, they're going to want</p> <p>14 to sell our business, but it's going to be hard to</p> <p>15 find buyers of the business if they don't see that</p> <p>16 profit.</p> <p>17 JUDGE STRICKLER: So profit drives</p> <p>18 creativity just like covering the costs of the</p> <p>19 creator for the product?</p> <p>20 THE WITNESS: That's correct.</p> <p>21 JUDGE STRICKLER: Thank you.</p> <p>22 BY MS. EHLER:</p> <p>23 Q. You described a general trend in the</p> <p>24 market a minute ago. If the music streaming</p> <p>25 services were promotional to other sources of</p>
972	<p>1 JUDGE STRICKLER: You need that revenue</p> <p>2 in order to maintain your ability to make those</p> <p>3 payments, as well, and you also need that revenue</p> <p>4 to maintain a level of profit that you find</p> <p>5 satisfactory?</p> <p>6 THE WITNESS: That's correct. We're</p> <p>7 owned by Vivendi, and they have a financial plan</p> <p>8 for us each year. We have to hit that target.</p> <p>9 JUDGE STRICKLER: Is there a reluctance</p> <p>10 to mention that you try to meet profit goals as</p> <p>11 well as cover costs?</p> <p>12 THE WITNESS: No, and that's -- that's</p> <p>13 one of the kind of given and obvious goals of any</p> <p>14 business.</p> <p>15 JUDGE STRICKLER: It's equally given</p> <p>16 and obvious that you need to cover your costs.</p> <p>17 When we have industry witnesses, I'm always struck</p> <p>18 by the fact that you don't want to mention the fact</p> <p>19 that you want -- you need to make a profit, which</p> <p>20 seems perfectly, as you say, obvious -- equally as</p> <p>21 obvious as meeting costs.</p> <p>22 THE WITNESS: Right.</p> <p>23 I think the profit maximization goal is</p> <p>24 definitely -- you know, it's a top goal of the</p> <p>25 company. The reason why I focus more on funding</p>	974	<p>1 revenue like CDs and downloads, would you expect to</p> <p>2 see a different trend in the market?</p> <p>3 A. Well, of course. I mean, if streaming</p> <p>4 services were promotional, then, as we have seen</p> <p>5 the consumption of streaming skyrocket over the</p> <p>6 last few years, we should have seen kind of a</p> <p>7 corresponding growth in sales revenue. I believe</p> <p>8 we've seen the opposite; as streaming services have</p> <p>9 increased, the sales have declined.</p> <p>10 Q. Do you consider the promotional and</p> <p>11 substitutional effects of the streaming services</p> <p>12 when you are negotiating direct licenses?</p> <p>13 A. It's in the background and it's</p> <p>14 generally not explicitly considered in any</p> <p>15 particular deal. The promotional effect is not</p> <p>16 really considered at all because, as I explained</p> <p>17 before, we don't really see a promotional effect in</p> <p>18 any new service, unless it's a clip service and we</p> <p>19 might see some promotional effects for licensing of</p> <p>20 30-second clips or -- you know, we did a deal with</p> <p>21 a game called a SongPop where you have to -- you</p> <p>22 listen to ten-second clips and have to name the</p> <p>23 song and then at the end of that game you get the</p> <p>24 actual name and artwork of all the songs that were</p> <p>25 just played with a buy link. You know, that,</p>

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975	<p>1 potentially, could be promotional. But we don't</p> <p>2 consider promotional effects in full-track services</p> <p>3 because the consumer is getting the end product.</p> <p>4 You know, we -- in terms of</p> <p>5 substitutional effects, we have to consider the</p> <p>6 marketplace as a whole. So we never negotiate</p> <p>7 deals in a vacuum. We always consider, you know,</p> <p>8 where this particular service would fit in the</p> <p>9 overall digital ecosystem and, you know, we hope</p> <p>10 that services are as additive as possible, but</p> <p>11 we're realistic in knowing that there is a</p> <p>12 potential cannibalization aspect to each new</p> <p>13 service that we license, so we have to figure out,</p> <p>14 you know, how each service can differentiate from</p> <p>15 other services and hopefully grow the market</p> <p>16 overall.</p> <p>17 JUDGE STRICKLER: Excuse me, Counsel.</p> <p>18 Just following up on that answer, Mr.</p> <p>19 Harrison, so when you do a digital deal, you do</p> <p>20 consider the substitution or cannibalization effect</p> <p>21 as you -- as you described it, right?</p> <p>22 THE WITNESS: Yes.</p> <p>23 JUDGE STRICKLER: So the rate that is</p> <p>24 set in the negotiations is reflective of what you</p> <p>25 anticipate is the cannibalization or substitution</p>	977	<p>1 THE WITNESS: Okay.</p> <p>2 JUDGE STRICKLER: Just to make sure</p> <p>3 when you answer, you don't give anything</p> <p>4 restricted.</p> <p>5 THE WITNESS: Right, right.</p> <p>6 So, you know, we've seen, you know,</p> <p>7 different effects of different services, and our</p> <p>8 learning and our -- kind of our thinking about the</p> <p>9 digital ecosystem has changed over time. I mean,</p> <p>10 as new evidence has come out, as we've seen the</p> <p>11 performance data from various services. So we --</p> <p>12 we can never -- we can't remain in a static</p> <p>13 strategy. We're constantly having to adjust and</p> <p>14 see what's going on in the marketplace to try to</p> <p>15 hit that optimal level of revenue and optimal</p> <p>16 amount of music exploitation.</p> <p>17 JUDGE STRICKLER: So if I was looking</p> <p>18 at the -- the per performance rate or percentage of</p> <p>19 revenue rate that I would see in a direct license</p> <p>20 between Universal and any of the direct or</p> <p>21 interactive services, those rates would incorporate</p> <p>22 already Universal's best understanding of the cost</p> <p>23 of substitution or cannibalization of digital</p> <p>24 downloads; is that a fair statement?</p> <p>25 THE WITNESS: It would be a combination</p>
976	<p>1 effect of the direct service on -- on other aspects</p> <p>2 of the digital ecosystem, as you described,</p> <p>3 correct?</p> <p>4 THE WITNESS: Yes, I would say all of</p> <p>5 those considerations are built into the final</p> <p>6 negotiated rate once we sign the agreement.</p> <p>7 JUDGE STRICKLER: So the</p> <p>8 cannibalization, if we're talking about a direct</p> <p>9 service, is a cannibalization of digital downloads,</p> <p>10 perhaps? Is that one issue you're concerned with,</p> <p>11 that someone who would become a listener on</p> <p>12 Spotify, for example, might then, therefore, be</p> <p>13 less likely to buy songs through the iTunes store,</p> <p>14 for example, a digital download that way, and that</p> <p>15 would be an example of cannibalization? Is that</p> <p>16 what you mean?</p> <p>17 THE WITNESS: That's a good example.</p> <p>18 Yeah, it does depends on the deal. We don't always</p> <p>19 just think of the impact on downloads. We might</p> <p>20 think of the impact on other streaming services.</p> <p>21 But Spotify is a good example where, you know, we</p> <p>22 have -- for the initial year or two that Spotify</p> <p>23 was --</p> <p>24 JUDGE STRICKLER: Let me just stop you</p> <p>25 for a second.</p>	978	<p>1 of the rates and also the service description or</p> <p>2 functionality that's described.</p> <p>3 JUDGE STRICKLER: Okay. I should not</p> <p>4 say rates. The overall value of the deal, let's</p> <p>5 put it that way --</p> <p>6 THE WITNESS: All the terms and</p> <p>7 conditions.</p> <p>8 JUDGE STRICKLER: Yes. Thank you.</p> <p>9 I'll say value as a shorthand for that.</p> <p>10 The overall value of the deal to Universal, when we</p> <p>11 look at the terms, including the rates, all the</p> <p>12 terms, we reflect Universal's best understanding of</p> <p>13 what the substitution of cannibalization effect</p> <p>14 that was a negative effect would be in those terms</p> <p>15 and conditions and rates will all attempt to</p> <p>16 account for that; is that a fair statement?</p> <p>17 THE WITNESS: I think that's fair.</p> <p>18 JUDGE STRICKLAND: Okay. Thank you.</p> <p>19 BY MS. EHLER:</p> <p>20 Q. I think you may have touched on my next</p> <p>21 question, but in the situation where Universal's</p> <p>22 negotiating a direct to license, would you agree to</p> <p>23 lower rates for a service with a low ARPU if you</p> <p>24 thought it would attract users from a service with</p> <p>25 a higher ARPU?</p>

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<p>1 MR. STURM: Objection. Leading. Your 2 Honor. 3 CHIEF JUDGE BARNETT: Sustained. 4 BY MS. EHLER: 5 Q. Would the impact of the ARPU of a 6 service on other services affect the way -- affect 7 whether you were willing to give it a lower rate? 8 A. Well, as I said before, the -- we look 9 at every service in the context of the marketplace 10 as a whole and we know that the plays of one 11 service could take away the plays of another 12 service, and we want to generally support and drive 13 as much usage as possible toward the higher ARPU 14 services so that we can make as much money as 15 possible. 16 MS. EHLER: Your Honor, I'm about to 17 move into restricted information, if we could clear 18 the courtroom. 19 CHIEF JUDGE BARNETT: Anyone in the 20 hearing room who has not signed a nondisclosure 21 certificate, please wait outside. 22 (THIS ENDS PUBLIC SESSION) 23 (RESTRICTED SESSION BOUND SEPARATELY) 24 25</p>	<p>1 (THIS BEGINS PUBLIC SESSION) 2 CHIEF JUDGE BARNETT: Sorry. Hearing 3 room. Old habits die hard. 4 BY MR. STURM: 5 Q. Mr. Harrison, you've been with 6 Universal for about ten years, correct? 7 A. Correct. 8 Q. And Ms. Ehler asked you some questions 9 about your job responsibilities. Your job at 10 Universal is primarily legal as opposed to 11 business, correct? 12 A. Correct. 13 Q. And immediately before joining 14 Universal, you were in private law practice for 15 about six years? 16 A. Yeah, close to six years. 17 Q. In addition to being a lawyer for 18 Universal, you're also on the licensing committee 19 for SoundExchange, right? 20 A. That's right. 21 Q. And you've been on that committee about 22 seven years, since 2008? 23 A. Something like that. 24 Q. And the licensing committee includes 25 you on behalf of Universal, right?</p>
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<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 A. Yes. 2 Q. Mr. Wilcox, who is a future witness 3 from Warner, right? 4 A. Right. 5 Q. Two representatives from Sony. right? 6 A. Jeff Walker and Andrea Finkelstein. 7 Q. Those two are from Sony? 8 A. Yes. 9 Q. Also Mr. Van Arman, who I believe 10 testified on Tuesday. He's on the licensing 11 committee? 12 A. Yes. 13 Q. Now, that licensing committee of 14 SoundExchange is scheduled to meet every week by 15 telephone, right? 16 A. That's right. 17 Q. And the primary discussion -- subject 18 of discussions on those telephone conferences in 19 the licensing committee is strategy for the CRB 20 litigation, correct? 21 MS. EHLER: Objection, Your Honor, to 22 the extent it's calling for privileged information. 23 MR. STURM: Well, I didn't ask the 24 nature of the strategy and it is a question that he 25 answered at his deposition. To the extent there</p>

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1094	<p>1 was any privilege, it was waived.</p> <p>2 CHIEF JUDGE BARNETT: Overruled.</p> <p>3 I think you can answer that question.</p> <p>4 THE WITNESS: Could you repeat the</p> <p>5 question?</p> <p>6 BY MR. STURM:</p> <p>7 Q. Yeah.</p> <p>8 The primary subject of these weekly</p> <p>9 telephone conferences for the SoundExchange</p> <p>10 licenses committee is strategy for the CRB</p> <p>11 litigation, correct?</p> <p>12 A. That's a common subject.</p> <p>13 Q. And what are -- are there other common</p> <p>14 subjects, without getting into anything privileged?</p> <p>15 A. We talk about settlement deals for</p> <p>16 different constituencies of statutorily licensed</p> <p>17 services.</p> <p>18 Q. Thank you.</p> <p>19 In your written direct testimony, you</p> <p>20 say that Universal's share of the U.S. recorded</p> <p>21 music market is about 38 percent, right?</p> <p>22 A. Right.</p> <p>23 Q. That includes EMI which you acquired in</p> <p>24 2012, right?</p> <p>25 A. Right.</p>	1096	<p>1 be even a little bit higher than that, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Let's talk a little bit about your</p> <p>4 negotiations with interactive services. I think</p> <p>5 you testified on direct that in a renegotiation</p> <p>6 with Slacker, you gave them some relief on a</p> <p>7 minimum guarantee because -- well, let me see if I</p> <p>8 can -- you, on occasion, have given some relief</p> <p>9 when services have indicated that they were</p> <p>10 unprofitable?</p> <p>11 MS. EHLER: I just want to be careful</p> <p>12 about confidential to the extent it's getting into</p> <p>13 any specifics.</p> <p>14 I don't know if Mr. Harrison can answer</p> <p>15 without revealing sensitive business information.</p> <p>16 CHIEF JUDGE BARNETT: I appreciate</p> <p>17 that, and Mr. Harrison can certainly indicate if he</p> <p>18 feels he cannot.</p> <p>19 BY MR. STURM:</p> <p>20 Q. Are you comfortable answering that</p> <p>21 question?</p> <p>22 A. Could you repeat the question?</p> <p>23 Q. Sure.</p> <p>24 As rephrased, it was on occasion you</p> <p>25 have given some relief to services in negotiations</p>
1095	<p>1 Q. Then, at your deposition, you estimated</p> <p>2 that Sony was just under 30 percent, right?</p> <p>3 A. Right.</p> <p>4 Q. And you have read your deposition. I</p> <p>5 assume, recently in preparation for your testimony</p> <p>6 here?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So Mr. Kooker testified a couple</p> <p>9 of days ago in open court that Sony's share was 26</p> <p>10 to 28 percent. So ballpark the same as what you</p> <p>11 said.</p> <p>12 So if you add your 38 percent and use</p> <p>13 27 percent for Sony, that's 65 percent of the U.S.</p> <p>14 recorded music market, right?</p> <p>15 A. Right.</p> <p>16 Q. And then Warner is about another 20</p> <p>17 percent, right?</p> <p>18 A. Something like that.</p> <p>19 Q. So just doing the math, it's fair to</p> <p>20 say that you guys getting together for your weekly</p> <p>21 licensing committee meetings control 85 percent of</p> <p>22 the U.S. recorded music market, right?</p> <p>23 A. That's right. Those companies.</p> <p>24 Q. That's true.</p> <p>25 If you add some of the others, it might</p>	1097	<p>1 based on suggestions that they were not being</p> <p>2 profitable; is that fair, without getting into any</p> <p>3 details?</p> <p>4 A. That's fair.</p> <p>5 Q. Okay. But you have never lowered any</p> <p>6 of the rates that you are proposing as a</p> <p>7 consequence to finding out some other major was</p> <p>8 offering a lower rate, correct?</p> <p>9 A. I don't recall that happening.</p> <p>10 Q. Okay. And at the time of your</p> <p>11 deposition, you couldn't think of any action that</p> <p>12 Universal has ever taken to compete with Sony or</p> <p>13 Warner with respect to licensing its services,</p> <p>14 correct?</p> <p>15 A. Well, we have matched price in download</p> <p>16 stores in the past to a lower price.</p> <p>17 Q. Okay. Do you have tab -- the</p> <p>18 cross-examination binder there?</p> <p>19 A. Yes.</p> <p>20 Q. Will you look at Page 218, please?</p> <p>21 Should be right in the first part of the binder.</p> <p>22 JUDGE FEDER: And that's 218 of the</p> <p>23 deposition transcript?</p> <p>24 MR. STURM: Yes, sir.</p> <p>25 MS. EHLER: I apologize. I'm truly not</p>

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<p>1 trying to be an obstructionist. 2 The deposition was designated 3 restrictive, and if you want to just give me a 4 second to look and make sure -- 5 MR. STURM: Yes. 6 MS. EHLEER: -- that we're willing to 7 unrestrict that -- 8 MR. STURM: Right. 9 MS. EHLEER: -- piece of information. 10 MR. STURM: So it's at 218, Line 7 to 11 Line 10. 12 MS. EHLEER: I think that section is 13 okay. 14 Thank you. 15 BY MR. STURM: 16 Q. So you're at Page 218 of your 17 deposition? 18 A. Yes. 19 Q. And did I ask, at that time, and did 20 you answer, question: "Are there any actions you 21 can think of that Universal takes to compete with 22 Sony and Warner or Warner with respect to 23 services?" 24 Answer: "No." 25 A. Yes.</p>	<p>1 is what I wrote down. 2 Is that an accurate summary of your 3 testimony? 4 A. That's accurate. 5 Q. Okay. But I asked you that question at 6 your deposition, right? Do you remember that? 7 A. No. If you could point me to that 8 page. 9 Q. Sure. 10 Page 194. And before I read it, I'll 11 give Ms. Ehler a chance to look. 12 MS. EHLEER: What lines are you looking 13 at? 14 MR. STURM: 194, Line 9. And we will 15 go on to maybe Line 20. 16 MS. EHLEER: Okay. 17 BY MR. STURM: 18 Q. So, at your deposition, I asked you, 19 question: "Does the perceived promotional or 20 substitutionally affect the service, affect the 21 rates that Universal is willing to offer for a 22 particular service?" 23 Your answer was: "Yes." 24 Right? 25 A. Right.</p>
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<p>1 Q. Now, you have had services -- without 2 getting into any specifics -- come in and say, you 3 know, if you cut your rates I'll play more of your 4 music, right? Services have made that pitch to 5 you? 6 A. I think it's mainly been in the 7 inverse, meaning that if the rates are too high we 8 won't play your content as much or won't 9 merchandise the content as much. 10 Q. Okay. 11 A. But it's a reasonable inference from 12 that. 13 Q. Okay. But that doesn't sway your 14 decision as to what you're going to offer, correct. 15 that argument? 16 A. Correct. 17 Q. And that's because you always want to 18 get the highest rate possible, correct? 19 A. Correct. 20 Q. Ms. Ehler asked you some questions 21 about whether the perceived promotional or 22 substitutional effect of the service affects the 23 rates that Universal is willing to offer that 24 service. I believe this was done in open session. 25 And I believe you said that it's in the background,</p>	<p>1 Q. And the way that the rate is affected 2 is that the higher the level of interactivity, the 3 higher the rate, right? 4 I'm sorry. I wasn't quoting. That was 5 a new question to you. 6 A. Oh, sorry. 7 Can you repeat the question? 8 Q. Yeah. 9 So the way the rate is affected is that 10 the higher the level of interactivity, the higher 11 the rate, right? 12 A. That's right. 13 Q. And the lower the level of 14 interactivity, the lower the rate, right? 15 A. Right. 16 Q. And the reason for that is you think 17 on-demand or higher levels of interactivity are 18 more substitutional than less on-demand, correct? 19 A. Correct. 20 Q. And, in fact, if you were to rank 21 streaming services from least substitutional to 22 most, the order would be simulcast, then custom, 23 then on-demand, correct? 24 A. Yes. 25 Q. So simulcast is the least</p>

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1102	<p>1 substitutional, right?</p> <p>2 A. Right.</p> <p>3 The simulcast, as I understand it,</p> <p>4 which is playing the same broadcast on the Internet</p> <p>5 that's being played on terrestrial.</p> <p>6 Q. Right.</p> <p>7 So that's the least substitutional,</p> <p>8 right?</p> <p>9 A. Right.</p> <p>10 Q. On-demand is the most substitutional,</p> <p>11 right?</p> <p>12 A. Right.</p> <p>13 Q. And custom is somewhere in the middle?</p> <p>14 A. That's right.</p> <p>15 Q. And is that hierarchy based on data you</p> <p>16 have reviewed, or is that just your perception from</p> <p>17 being in the industry?</p> <p>18 A. It's more perception from being in the</p> <p>19 industry.</p> <p>20 Q. And you certainly -- you haven't seen</p> <p>21 any data that contradicts that hierarchy that you</p> <p>22 just testified to, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And you believe that if there are</p> <p>25 limited -- if customization is limited, a lower</p>	1104	<p>1 doesn't have any of those things that you've just</p> <p>2 been talking about, correct?</p> <p>3 A. I'm not aware of simulcasting having</p> <p>4 those inputs.</p> <p>5 Q. Sorry to switch binders on you.</p> <p>6 Do you have your -- the binder that Ms.</p> <p>7 Ehler gave you, the -- your written direct</p> <p>8 testimony?</p> <p>9 A. Yes.</p> <p>10 Q. So look on Page 7, Paragraph 13.</p> <p>11 A. Okay.</p> <p>12 Q. So I'm starting, I guess, with the</p> <p>13 second sentence -- well, let's start with the first</p> <p>14 few sentences of that paragraph. You say, "In our</p> <p>15 experience," the services ability to return</p> <p>16 sufficient value to Universal depends on the amount</p> <p>17 of average revenue per user, ARPU, the services can</p> <p>18 generate. In particular, we have found that</p> <p>19 streaming services cannot generate sufficient ARPU</p> <p>20 through advertising a loan. This is, in part,</p> <p>21 because streaming services are reticent to play</p> <p>22 advertisements at the same frequency as terrestrial</p> <p>23 radio."</p> <p>24 I assume I read that correctly?</p> <p>25 A. Yes.</p>
1103	<p>1 rate can be justified, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And some of the factors that would be</p> <p>4 relevant to that would be whether there is thumbs</p> <p>5 up and thumbs down. That's relevant, right? If</p> <p>6 you can use that functionality -- if you can't use</p> <p>7 that functionality, you would agree rates should be</p> <p>8 lower, right?</p> <p>9 A. Yeah. There are sets of features that</p> <p>10 could make a service more interactive or less</p> <p>11 interactive. Thumbs up, thumbs down is one of</p> <p>12 them, but it depends what the entire context of</p> <p>13 what the service is in combination.</p> <p>14 Q. Right.</p> <p>15 And another feature would be related to</p> <p>16 a particular hit, a particular artist, right?</p> <p>17 A. That's right.</p> <p>18 Q. Sliding between more and less</p> <p>19 discovery, that would be another one, right?</p> <p>20 A. Right.</p> <p>21 Q. And when you mentioned it in your</p> <p>22 deposition was mood based influence, right? That's</p> <p>23 another one?</p> <p>24 A. Right.</p> <p>25 Q. And simulcasting -- basic simulcasting</p>	1105	<p>1 Q. Okay. You don't have any data to show</p> <p>2 or any reason to believe that the ad load for</p> <p>3 simulcasters is any less than terrestrial radio,</p> <p>4 correct?</p> <p>5 A. I don't have any evidence to that</p> <p>6 effect.</p> <p>7 Q. So when you talk about streaming</p> <p>8 services in that third sentence that I just read</p> <p>9 there, you're not talking about simulcasters,</p> <p>10 right?</p> <p>11 A. That's not what I was thinking of when</p> <p>12 I wrote that sentence.</p> <p>13 Q. A few sentences down you say,</p> <p>14 "Publicly-available statements from streaming</p> <p>15 services reflect the services predictions that</p> <p>16 advertising revenues will grow as advertisers</p> <p>17 become more comfortable with the audience that the</p> <p>18 services reach."</p> <p>19 I read that correctly, right?</p> <p>20 A. Right.</p> <p>21 Q. But that prediction is also not from</p> <p>22 simulcasters, right?</p> <p>23 A. No. That's not the source.</p> <p>24 Q. Let's flip back a couple of pages to</p> <p>25 Paragraph 18, which is on Page 10, the last -- are</p>

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1106	<p>1 you there?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So I'm looking at the last</p> <p>4 sentence of that paragraph, and you say, "As a</p> <p>5 result, I believe that the statutory rates need to</p> <p>6 increase over the next rate term to reflect the</p> <p>7 fact that customized webcasting services are</p> <p>8 becoming more and more personalized and competing</p> <p>9 directly with the on-demand services."</p> <p>10 But simulcasting of terrestrial radio</p> <p>11 isn't becoming more personalized than it was</p> <p>12 before, is it?</p> <p>13 A. I don't know that it is. It</p> <p>14 theoretically could, but I don't know that it is.</p> <p>15 JUDGE STRICKLER: When you say,</p> <p>16 "theoretically could," what's your basis for that</p> <p>17 statement?</p> <p>18 THE WITNESS: Well, that simulcasts</p> <p>19 could replace programming that was in the original</p> <p>20 terrestrial broadcast with other programming. I</p> <p>21 mean, you can switch out tracks that are played.</p> <p>22 You could theoretically include tracks in place of</p> <p>23 ad space. So they have the technology to</p> <p>24 manipulate the programming that's in the simulcast</p> <p>25 to make it different from what was on the</p>	1108	<p>1 I'm here on behalf of Pandora Media. Let's start,</p> <p>2 if we could, just with some basics. We talked a</p> <p>3 lot today about the interactive services and I have</p> <p>4 a few questions there.</p> <p>5 If you could look at Page 10 or, I'm</p> <p>6 sorry, Paragraph 10 of your testimony. You will</p> <p>7 see there's a sentence -- it's the second sentence,</p> <p>8 it says, "Customized webcasting services transmit</p> <p>9 individual recordings to individual users."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. All right. And you don't mean by that</p> <p>13 to suggest that users of a customized service can</p> <p>14 pick a particular recording to listen to, correct?</p> <p>15 A. No.</p> <p>16 Q. In fact, a user of a customized service</p> <p>17 like Pandora can't pick a particular recording to</p> <p>18 listen to, correct?</p> <p>19 A. That's right. They can just pick a</p> <p>20 recording to play a playlist like that recording.</p> <p>21 Q. Right.</p> <p>22 But they can't pick the recordings that</p> <p>23 they're going to hear, correct?</p> <p>24 A. No. Although that recording could come</p> <p>25 up later in the playlist. It just doesn't come up</p>
1107	<p>1 terrestrial broadcast.</p> <p>2 JUDGE STRICKLER: Thank you.</p> <p>3 BY MR. STURM:</p> <p>4 Q. But, in that event, it would still be a</p> <p>5 one to -- a one to many broadcast as opposed to a</p> <p>6 one-to-one custom situation, right?</p> <p>7 A. I'm not positive.</p> <p>8 Q. And you haven't -- you are not aware</p> <p>9 that this is actually being done. You're just</p> <p>10 saying it's technologically possible, correct?</p> <p>11 A. Correct.</p> <p>12 MR. STURM: I don't have any further</p> <p>13 questions, Your Honor.</p> <p>14 Thank you.</p> <p>15 CHIEF JUDGE BARNETT: Thank you, Mr.</p> <p>16 Sturm.</p> <p>17 I apologize for calling you Mr. Miller</p> <p>18 a while ago. I'll use the excuse that I'm old.</p> <p>19 Mr. Larson.</p> <p>20 MR. LARSON: Thank you, Your Honor.</p> <p>21 CROSS-EXAMINATION BY COUNSEL FOR</p> <p>22 PANDORA MEDIA</p> <p>23 BY MR. LARSON:</p> <p>24 Q. Good afternoon, Mr. Harrison.</p> <p>25 A. Good afternoon.</p> <p>Q. I'm Todd Larson. We have met before.</p>	1109	<p>1 at the first track in the playlist.</p> <p>2 Q. Now, on an on-demand service like</p> <p>3 Spotify, a user can pick the particular track that</p> <p>4 he or she is going to hear, right?</p> <p>5 A. Depending on the service tier, yes.</p> <p>6 Q. And so on the premium Spotify service?</p> <p>7 A. That's correct.</p> <p>8 Q. And on the Spotify free service, on the</p> <p>9 desktop, as well, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Now, a user on Pandora cannot choose</p> <p>12 and listen to a particular album, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And a user of an on-demand service like</p> <p>15 Rhapsody or Rdio can select and listen to an entire</p> <p>16 album; is that right?</p> <p>17 A. That's right.</p> <p>18 Q. And they can listen to that album over</p> <p>19 and over if they want to?</p> <p>20 A. That's right.</p> <p>21 Q. And other Rhapsody users -- I'm sorry.</p> <p>22 Let me go back one step.</p> <p>23 A user on Rhapsody and Rdio can also</p> <p>24 construct playlists where they pick each track in</p> <p>25 the playlist, correct?</p>

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1110	<p>1 A. Correct.</p> <p>2 Q. And other Rhapsody users who might</p> <p>3 choose to listen to that playlist can see every</p> <p>4 song on that playlist ahead of time song by song;</p> <p>5 is that right?</p> <p>6 A. That's right.</p> <p>7 Q. And a Pandora user -- I think we may</p> <p>8 have covered this, but I'll ask just to be sure. A</p> <p>9 Pandora user can't construct a track by track</p> <p>10 playlist with tracks of his or her choice, correct?</p> <p>11 A. No, they cannot.</p> <p>12 Q. And if a Pandora user listens to a</p> <p>13 friend's station, that Pandora user can't see the</p> <p>14 tracks that will be included in the station; is</p> <p>15 that right?</p> <p>16 A. That's right.</p> <p>17 Q. And the Pandora user can't even see the</p> <p>18 title of the next song that's coming, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. In Paragraph 30, your testimony</p> <p>21 mentions the Spotify free tier. I think we talked</p> <p>22 about this a good bit on your direct, the Spotify</p> <p>23 shuffle service.</p> <p>24 Do you remember that?</p> <p>25 A. Yes.</p>	1112
1111	<p>1 Q. Okay. And so, again, just to -- so</p> <p>2 we're all using the same terminology, Spotify has</p> <p>3 both a paid tier and a free tier; is that right?</p> <p>4 A. That's right.</p> <p>5 Q. And as to the free tier, that's</p> <p>6 available both on the desktop and on mobile phones,</p> <p>7 right?</p> <p>8 A. So the on-demand free tier is available</p> <p>9 on the desktop and the shuffle is available on</p> <p>10 mobile.</p> <p>11 Q. Right. Thank you.</p> <p>12 So just to be clear, on the desktop,</p> <p>13 the free version of Spotify is fully on-demand,</p> <p>14 correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And it has the features we were just</p> <p>17 talking about a moment ago where users can pick</p> <p>18 particular songs or albums, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And then the -- the free service for</p> <p>21 Spotify and the mobile is what's called the shuffle</p> <p>22 service you talk about?</p> <p>23 A. Yes.</p> <p>24 Q. And the shuffle service allows a user</p> <p>25 to pick an album, a particular album and hear up to</p>	1113

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1114	<p>1 Q. Look at Paragraph 16, if you would, of</p> <p>2 your testimony. In Paragraph 16, you suggest in</p> <p>3 the last sentence that Pandora is streaming music</p> <p>4 to users who might otherwise pay for a</p> <p>5 subscription.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. You don't have any evidence as to what</p> <p>9 number of free Pandora users would sign up for</p> <p>10 Pandora I, the subscription product, if there was</p> <p>11 no Pandora free service, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. And you don't have any evidence, I take</p> <p>14 it, or you haven't cited any in your testimony, at</p> <p>15 least, that there is some meaningful group of users</p> <p>16 who would be willing to pay to subscribe to Pandora</p> <p>17 beyond those who already have, correct?</p> <p>18 A. I don't have the data because I don't</p> <p>19 get reported to, but Pandora, I think, had some</p> <p>20 growth from what I recall when they had a play cap</p> <p>21 or an hours cap on their free service. So when</p> <p>22 they took it away, I would expect that that growth</p> <p>23 would decline.</p> <p>24 Q. You recognize in your direct testimony</p> <p>25 -- in your direct with Ms. Ehler that there are</p>	1116	<p>1 you for your -- what evidence you have related to</p> <p>2 that question.</p> <p>3 Do you remember that?</p> <p>4 A. Yes.</p> <p>5 Q. And I believe your answer was the fact</p> <p>6 that sales have been declining in the last few</p> <p>7 years at the same time that listeners' shift to</p> <p>8 streaming services has increased; is that right?</p> <p>9 A. That's right.</p> <p>10 Q. All right. But you've got no evidence</p> <p>11 that listening to statutory webcasting is actually</p> <p>12 the cause of the decline in sales of permanent</p> <p>13 downloads and CDs; is that right?</p> <p>14 A. Right. We don't have any --</p> <p>15 Q. That's fine. Your counsel will have a</p> <p>16 chance to ask you some questions if he wants to.</p> <p>17 So when you wrote the sentence, these</p> <p>18 sentences regarding the substitutional nature of</p> <p>19 webcasting services, you weren't thinking of any</p> <p>20 specific study or analysis that showed some</p> <p>21 causation between statutory webcasting and</p> <p>22 declining downloads or CD sales, correct?</p> <p>23 A. No. It was my industry, sense and</p> <p>24 industry experience.</p> <p>25 Q. Now, Judge Strickler asked you some</p>
1115	<p>1 some people who just aren't willing to pay for a</p> <p>2 subscription service, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Let's look at Paragraph 10. And sorry</p> <p>5 for bouncing around, but I'm trying to do the</p> <p>6 public questions before the restricted.</p> <p>7 In the last sentence there, you suggest</p> <p>8 that customized Internet radio creates a diminished</p> <p>9 need to create a recording.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And you also claim that streaming</p> <p>13 services -- and this is going over to Paragraph</p> <p>14 11 -- streaming services are drawing customers and</p> <p>15 revenue away from the sale of permanent downloads</p> <p>16 and CDs, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Right.</p> <p>19 So you're making the claim -- I think</p> <p>20 on your direct you said you didn't have evidence</p> <p>21 that Pandora was promotional, but here you're</p> <p>22 actually suggesting that Pandora is substitutional</p> <p>23 in sales, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And I think Ms. Ehler on direct asked</p>	1117	<p>1 questions on direct about whether you factor</p> <p>2 substitution. Is the potential substitution of a</p> <p>3 direct license to partner into your direct deals.</p> <p>4 Do you remember that?</p> <p>5 A. Yes.</p> <p>6 Q. And you indicated that you do consider</p> <p>7 that in your deals, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And you acknowledge that the</p> <p>10 substitutional impact of statutory webcasting</p> <p>11 services might differ from the substitutional</p> <p>12 impact of on-demand services; is that right?</p> <p>13 A. That's right.</p> <p>14 Q. If that's true, then isn't it also the</p> <p>15 case that your direct deal with a statutory</p> <p>16 webcaster might look somewhat different than your</p> <p>17 direct deals that you do with on-demand services?</p> <p>18 A. I guess it's possible.</p> <p>19 Q. In Paragraph 18 of your testimony, if</p> <p>20 you could take a look at that, in the middle of</p> <p>21 that paragraph, you claim that on-demand</p> <p>22 subscription services compete with statutory</p> <p>23 services for large portions of the same basic</p> <p>24 users; is that right?</p> <p>25 A. Yes.</p>

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1118	<p>1 Q. And you didn't base that contention on</p> <p>2 any research demonstrating that Pandora users would</p> <p>3 otherwise subscribe to an on-demand service if</p> <p>4 Pandora weren't available, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And you acknowledge that Pandora</p> <p>7 competes with terrestrial radio, right?</p> <p>8 A. Right.</p> <p>9 Q. And you're aware that Pandora is</p> <p>10 increasingly available in the car through various</p> <p>11 integrations with automakers?</p> <p>12 A. Yes.</p> <p>13 Q. And, in your view, that fact would tend</p> <p>14 to increase the possible competition between</p> <p>15 Pandora and terrestrial radio that's also available</p> <p>16 in the car; is that right?</p> <p>17 A. It should.</p> <p>18 MR. LARSON: With that, Your Honor, I</p> <p>19 am up to some restricted material and I'm afraid I</p> <p>20 would have to ask to close the courtroom.</p> <p>21 CHIEF JUDGE BARNETT: Okay. Anyone who</p> <p>22 is in the courtroom who has not signed the</p> <p>23 nondisclosure certificate, please wait outside.</p> <p>24 (THIS ENDS PUBLIC SESSION)</p> <p>25 (RESTRICTED SESSION BOUND SEPARATELY)</p>	1156	<p>1 streaming will cover any decline in downloads that</p> <p>2 is expected in 2015; is that correct?</p> <p>3 A. I don't know their prediction in 2015.</p> <p>4 Q. You mentioned that UMG is owned by</p> <p>5 Vivendi?</p> <p>6 A. Yes.</p> <p>7 Q. And you understand that Vivendi's</p> <p>8 chairman and CEO is Arnaud de Puyfontaine? Did I</p> <p>9 say that right?</p> <p>10 A. I don't know if you said it correctly,</p> <p>11 but I believe that Vivendi's chairman is Vincent</p> <p>12 Bollere.</p> <p>13 Q. So earlier, the chairman Jean-Rene</p> <p>14 Fourtou would have been the chair?</p> <p>15 A. Might have been an interim chair. I</p> <p>16 can't remember.</p> <p>17 Q. So if he was speaking as CEO to</p> <p>18 analysts and investors in February, two weeks ago,</p> <p>19 if the transcript said he was CEO, he might have</p> <p>20 been CEO, he might not have been?</p> <p>21 A. Certainly possible.</p> <p>22 Q. You don't know?</p> <p>23 A. No.</p> <p>24 Q. You don't know.</p> <p>25 Do you have any understanding at all</p>
1155	<p>1 (THIS BEGINS OPEN SESSION)</p> <p>2 CROSS-EXAMINATION BY COUNSEL FOR</p> <p>3 IHEARTRADIO</p> <p>4 BY MR. THORNE:</p> <p>5 Q. Mr. Harrison, I am John Thorne</p> <p>6 representing iHeartRadio. I'm going to be able to</p> <p>7 be brief thanks to our colleague's questions which</p> <p>8 covered some of the stuff I was going to cover, but</p> <p>9 let me just start off with something she may have</p> <p>10 said and I will be clarifying.</p> <p>11 Under current rates, Universal Music</p> <p>12 Group's streaming revenues are currently growing</p> <p>13 fast enough to offset the decline in downloads.</p> <p>14 That's correct, isn't it?</p> <p>15 A. On digital downloads, yes.</p> <p>16 Q. Under the current rates. That includes</p> <p>17 that Pandora is paying roughly half the statutory</p> <p>18 rate at the moment; is that correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And then in 2014, it was the case that</p> <p>21 the growth of streaming had covered all the decline</p> <p>22 in downloads; is that correct?</p> <p>23 A. The decline in downloads, yes.</p> <p>24 Q. And likewise, in 2015, which is not</p> <p>25 finished, you're still projecting -- you project</p> <p>that the streaming will cover -- the growth in</p>	1157	<p>1 about what is going to happen in 2015 to the growth</p> <p>2 of streaming, whether it is going to cover the</p> <p>3 decline in downloads that you talked about?</p> <p>4 A. I don't know.</p> <p>5 Q. You don't know. Would the CEO, whoever</p> <p>6 he is, know?</p> <p>7 A. Well, the CEO probably has access to</p> <p>8 financial plans that make a prediction, but I don't</p> <p>9 think he knows.</p> <p>10 Q. He has an obligation to be careful in</p> <p>11 talking to analysts and investors, and you know</p> <p>12 that because you are a lawyer; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. And likewise, the chief financial</p> <p>15 officer of Vivendi would have to be cautious in</p> <p>16 talking about financials with analysts and</p> <p>17 investors; is that correct?</p> <p>18 A. Correct.</p> <p>19 Q. So your testimony mentioned that there</p> <p>20 was a very specific decline in downloads in January</p> <p>21 of 2014.</p> <p>22 Do you remember that?</p> <p>23 A. Yes.</p> <p>24 Q. And at the end of that same quarter, so</p> <p>25 the end of the first quarter of 2014, it was true,</p>

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1158	<p>1 wasn't it. that your CFO, the CFO of Vivendi</p> <p>2 believed streaming will be a good thing for the</p> <p>3 industry in the future in order to change the</p> <p>4 consumption model for masses of people; is that</p> <p>5 right?</p> <p>6 A. That's certainly the hope.</p> <p>7 Q. And then the CFO at that time, when you</p> <p>8 just had the blip in downloads, believed that</p> <p>9 Universal was clearly in a good position to benefit</p> <p>10 from the growth of streaming; is that correct?</p> <p>11 A. Correct.</p> <p>12 Q. So I was going to offer Universal Music</p> <p>13 Group's full-year strategic plan from 2015 to 2019,</p> <p>14 but I think I will save it for Mr. Caraeff and see</p> <p>15 if he is familiar with that.</p> <p>16 But assuming that what was produced to</p> <p>17 us in response to our interrogatories by</p> <p>18 SoundExchange is accurate, I would like to ask you</p> <p>19 some questions.</p> <p>20 MR. THORNE: I'm going to have to go on</p> <p>21 restricted materials at this point, Your Honor.</p> <p>22 CHIEF JUDGE BARNETT: Okay. I had</p> <p>23 forgotten we had reopened. If you are not a</p> <p>24 signatory to a nondisclosure certificate, could you</p> <p>25 please wait outside.</p>	1193	<p>1 (THIS BEGINS PUBLIC SESSION)</p> <p>2 MR. RICH: Your Honor, before the</p> <p>3 examination begins, if I may, Mr. Marks will be</p> <p>4 handling this witness for Pandora.</p> <p>5 CHIEF JUDGE BARNETT: Thank you.</p> <p>6 MS. ELGIN: Your Honor,</p> <p>7 cross-examination for NAB, Jennifer Elgin.</p> <p>8 MS. POPE: And for iHeart, Leslie Pope.</p> <p>9 MR. TOOF: Judge, Jackson Toof subbing</p> <p>10 in for Paul Fakler for SiriusXM. I doubt I'll have</p> <p>11 any cross-examination but just wanted to introduce</p> <p>12 myself.</p> <p>13 CHIEF JUDGE BARNETT: Thank you. I</p> <p>14 wondered what happened to Mr. Fakler. He didn't</p> <p>15 leave the ship unmanned.</p> <p>16 MR. TOOF: He did not.</p> <p>17 DIRECT EXAMINATION BY COUNSEL FOR</p> <p>18 SOUNDEXCHANGE</p> <p>19 BY MR. CHOUDHURY:</p> <p>20 Q. Good afternoon, Mr. Wheeler. I have</p> <p>21 "good morning" written in my outline, but -- as it</p> <p>22 were.</p> <p>23 Where are you currently employed, and</p> <p>24 what is your position?</p> <p>25 A. I'm currently employed by the Beggars</p> <p>Group of record labels based in London. And I am</p>
1159	<p>1 (THIS ENDS PUBLIC SESSION)</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	1194	<p>1 the director of digital.</p> <p>2 Q. And what was your position before you</p> <p>3 were director of digital?</p> <p>4 A. We don't really have a full job title</p> <p>5 structure at Beggars. But if you want to put a</p> <p>6 name on it, I was head of new media back in those</p> <p>7 days.</p> <p>8 Q. And how many employees are in the</p> <p>9 digital department at Beggars Group?</p> <p>10 A. Just myself. We decided about six or</p> <p>11 seven years ago to dispense all the digital</p> <p>12 business and just make it part of what everyone</p> <p>13 does. So digital is pretty engrained with</p> <p>14 everything we do as a company.</p> <p>15 Q. When was the first time you worked on</p> <p>16 licensing for the online distribution of sound</p> <p>17 recordings?</p> <p>18 A. We made our first deal in 1997 with a</p> <p>19 company called Amplified.com. It -- we think we</p> <p>20 were the first company of any significant size to</p> <p>21 make a digital distribution deal for our catalog at</p> <p>22 that point in time.</p> <p>23 CHIEF JUDGE BARNETT: Could you repeat</p> <p>24 the name of the service.</p> <p>25 THE WITNESS: Amplified.com.</p>

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1195	<p>1 CHIEF JUDGE BARNETT: Thank you.</p> <p>2 MR. CHOUDHURY:</p> <p>3 Q. And have you been involved in any trade</p> <p>4 associations or other organizations in the music</p> <p>5 industry?</p> <p>6 A. Yes. Beggars Group is a big supporter</p> <p>7 of the independent sector and is instrumental in</p> <p>8 many organizations representing the independent</p> <p>9 sector.</p> <p>10 Myself, I am the chairman of new media</p> <p>11 committee at the Association of Independent Music,</p> <p>12 which is the U.K. trade association for independent</p> <p>13 record labels. I also work closely with its</p> <p>14 American equivalent, A2IM.</p> <p>15 I've worked closely with Merlin, which</p> <p>16 is a licensing body for independent labels.</p> <p>17 I'm on the board of Video Performance</p> <p>18 Limited, which administers the full cost and</p> <p>19 performance rights of music videos in the U.K.</p> <p>20 across the entire industry.</p> <p>21 And I'm also on the board of</p> <p>22 Consolidated Independent, which is a technical</p> <p>23 services company for independent labels.</p> <p>24 Q. And besides your work at Beggars Group</p> <p>25 and the associations, organizations you just named,</p>	1197	<p>1 Q. If you could look at the last page of</p> <p>2 the exhibit.</p> <p>3 Is that your signature?</p> <p>4 A. Yes, it is.</p> <p>5 Q. Is the information in your written</p> <p>6 testimony true and correct?</p> <p>7 A. Yes, it is.</p> <p>8 MR. CHOUDHURY: Okay. At this time,</p> <p>9 Your Honor, I move for admission of SoundExchange</p> <p>10 Trial Exhibit 21.</p> <p>11 MR. MARKS: Mindful of the Court's</p> <p>12 prior rulings, no objection.</p> <p>13 MS. POPE: No objection.</p> <p>14 MR. TOOF: No objection.</p> <p>15 CHIEF JUDGE BARNETT: SoundExchange</p> <p>16 Exhibit 21 is admitted.</p> <p>17 (SoundExchange Exhibit No. 21 was</p> <p>18 admitted into evidence.)</p> <p>19 BY MR. CHOUDHURY:</p> <p>20 Q. Mr. Wheeler, what are the record labels</p> <p>21 that comprise the Beggars Group?</p> <p>22 A. We're a small -- we're a set of a small</p> <p>23 number of labels. Consists of 4AD Records, Matador</p> <p>24 Records, Rough Trade Records, EX Recordings. And</p> <p>25 recently we've added young Turks records to our</p>
1196	<p>1 have you otherwise been involved in the music</p> <p>2 industry?</p> <p>3 A. I've been fortunately enough that I've</p> <p>4 worked in music all my life. I've never done</p> <p>5 anything else. I've been a performer, musician,</p> <p>6 remixer, studio producer, engineer. I've played</p> <p>7 live. I was signed to the Beggars Group labels</p> <p>8 very briefly too.</p> <p>9 Q. And are you still a performer?</p> <p>10 A. I don't have time for that anymore,</p> <p>11 unfortunately. I realized that I was better at the</p> <p>12 business side of things than I was at the music</p> <p>13 side of things.</p> <p>14 Q. Me too.</p> <p>15 I'm going to ask you to take a look at</p> <p>16 the written direct testimony. I'm going to ask you</p> <p>17 to take a look at the document in front of you,</p> <p>18 SoundExchange Trial Exhibit 21.</p> <p>19 Do you recognize this document?</p> <p>20 A. Yes, I do.</p> <p>21 Q. What is it?</p> <p>22 A. It's my testimony to this court for</p> <p>23 proceedings on behalf of SoundExchange.</p> <p>24 Q. Did you prepare this testimony?</p> <p>25 A. Yes, I did.</p>	1198	<p>1 group of companies.</p> <p>2 Q. And how many artists are signed</p> <p>3 currently to Beggars Group labels?</p> <p>4 A. At any one point in time, there's</p> <p>5 roughly about a hundred artists currently signed to</p> <p>6 our labels.</p> <p>7 Q. About how many sound records do Beggars</p> <p>8 Group labels release in a typical year?</p> <p>9 A. In a regular year, we aim to release</p> <p>10 somewhere in the region of 40, maybe 45 albums. So</p> <p>11 that probably comprises around about 500 sounds</p> <p>12 recordings. We have a catalog of just over 20,000</p> <p>13 sound recordings in total.</p> <p>14 Q. And who are some of these artist in the</p> <p>15 Beggars Group?</p> <p>16 A. We work with a very diverse range of</p> <p>17 artists from the smallest to the biggest. Some of</p> <p>18 our artists would be Adele, Vampire Weekend, The</p> <p>19 xx, Alabama Shakes, The Pixies, The Cult, Queens of</p> <p>20 the Stone Age, and many, many more, which are much</p> <p>21 smaller and less likely to be known by this court.</p> <p>22 Q. And let me ask you: Did you sign these</p> <p>23 acts after they were famous?</p> <p>24 A. No. It's our business model to find</p> <p>25 artists before anyone knows about them. So when we</p>

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1199	<p>1 first discovered Adele, which is quite a few years 2 ago now, she was 16 years old. She was still at 3 school. She was playing gigs, and I saw her 4 upstairs in a back room of a pub in East London, 5 and she was absolutely awesome. 6 Q. She may still be. 7 Let me ask you how does the Beggars 8 Group compare to other independent record 9 companies? 10 A. The Beggars Group is in a pretty unique 11 position in the industry. We've been in existence 12 for around about 40 years. We have probably the 13 catalog of most successful and influential music 14 coming from the independent sector. 15 We have had historically a number of 16 hugely successful artists, which has enabled us to 17 get to the position that we are. 18 We have offices in 13 counties around 19 the world. We employ about 160 people around the 20 world. So for an independent label, we are 21 definitely quite a large organization. 22 Q. Are you supportive of the independent 23 record community in general? 24 A. We have a reputation of being quite 25 altruistic when it comes to the independent sector.</p>	1201
1200	<p>1 My chairman and the group has been instrumental in 2 setting up independent trade bodies to start within 3 the U.K. but also in the U.S. and across Europe. 4 And it has definitely a good reputation for looking 5 after the independent sector and not just of our 6 own interests. 7 Q. Mr. Wheeler, let me ask you, in the 8 course of your position, do you follow the product 9 offerings of streaming services? 10 A. I do. That's a core part of my job. 11 Q. Well, so what changes have you seen in 12 the product offerings of -- let's start with 13 interactive streaming services over the last five 14 years? 15 A. We find that old music services are 16 looking to innovate and provide different and more 17 sophisticated services to their users, trying to 18 provide best possible music experience. 19 We find in that there's so much data 20 been created over the years, that that data, when 21 mined, can really be honing in on what the users 22 want so as to provide a much more targeted music 23 experience and giving the users much more what 24 they -- I guess they don't know they want but 25 actually what they're happy to listen to.</p>	1202

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1203	<p>1 They're less work for the consumers. As I say,</p> <p>2 they can just hit a button and get a constant</p> <p>3 stream of music that they like.</p> <p>4 Q. Well, can you think of any example,</p> <p>5 besides Beats, of an interactive service that has</p> <p>6 offered this kind of experience you're describing?</p> <p>7 A. I think pretty much all services,</p> <p>8 Spotify, Rdio, Xbox, I think they all have that</p> <p>9 type of functionality nowadays.</p> <p>10 Q. Mr. Wheeler, your testimony, I believe</p> <p>11 you say customized webcasting may substitute for</p> <p>12 subscription-based models.</p> <p>13 Why?</p> <p>14 A. Well, as I've just been explaining, the</p> <p>15 more sophisticated recommendations get, the more</p> <p>16 tuned in to each individual user that these</p> <p>17 services get, the more that they're delivering the</p> <p>18 music that each individual user would like to hear.</p> <p>19 So I think the more targeted and the</p> <p>20 more perfect that gets, the less need the consumers</p> <p>21 going to have to say upgrade to a premium offering</p> <p>22 because he's getting enough music.</p> <p>23 And I think that's the phrase that I</p> <p>24 hear quite a lot in talking to our peers in the</p> <p>25 industry is that services are delivering enough</p>	1240	<p>1 CERTIFICATE OF COURT REPORTER</p> <p>2</p> <p>3 I, Bonnie L. Russo, do hereby certify that the</p> <p>4 foregoing transcript is a true record of the</p> <p>5 proceedings to the best of my ability, that I am</p> <p>6 not related to or employed by any of the parties</p> <p>7 involved in these proceedings, and, further, that I</p> <p>8 am not a relative or employee of any attorney or</p> <p>9 counsel employed by the parties hereto, or</p> <p>10 financially interested in the proceedings.</p> <p>11</p> <p>12</p> <p>13 _____</p> <p>14 Notary Public</p> <p>15 My Commission Expires:</p> <p>16 May 16, 2016</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
1204	<p>1 music to mean the consumers don't feel they need to</p> <p>2 pay for a more sophisticated or an advanced</p> <p>3 services.</p> <p>4 Q. Well, let me ask you, have you seen any</p> <p>5 other information or evidence in the market to</p> <p>6 support that deal?</p> <p>7 A. Well, interestingly, what we've seen</p> <p>8 with one of the services is that, in the United</p> <p>9 States, the usage on that service is 20 percent</p> <p>10 higher than the usage we see in other countries,</p> <p>11 you know, particularly across the European</p> <p>12 countries.</p> <p>13 And that can only lead us to believe</p> <p>14 that consumers in the United States are, on the</p> <p>15 whole, experiencing a more laid-back -- lean-back</p> <p>16 type of experience, you know, more of a give me a</p> <p>17 feed of the music I like type of experience.</p> <p>18 MR. CHOUDHURY: Your Honor, at this</p> <p>19 time I actually need to move into a restricted</p> <p>20 section.</p> <p>21 CHIEF JUDGE BARNETT: Anyone in the</p> <p>22 courtroom who didn't sign a nondisclosure</p> <p>23 certificate, please exit.</p> <p>24 (THIS ENDS PUBLIC SESSION)</p> <p>25 (RESTRICTED SESSION BOUND SEPARATELY)</p>		

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